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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/840,067	05/05/2004	Cary A. Jardin	10559/255002/P8904C	6651
20985	7590	08/20/2007		
FISH & RICHARDSON, PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER MIRZA, ADNAN M	
			ART UNIT 2145	PAPER NUMBER
			MAIL DATE 08/20/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/840,067

Applicant(s)

JARDIN ET AL.

Examiner

Adnan M. Mirza

Art Unit

2145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. In view of the Arguments filed on 06/18/2007, PROSECUTION IS HEREBY REOPENED. Prosecution set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 2145

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Banga-Smith et al (U.S. 5,931,904) and further in view of Smith et al (U.S. 7,139,844).

As per claims 1,6,11 Banga-Smith disclosed a method of enhancing data delivery comprising: sending a first packet from a client interface to a remote terminal at a first time; receiving at the client interface a second packet from the remote terminal at a second time (col. 3, lines 22-36); providing a plurality of different content versions, each is having a different amount of information, each content version being optimized for a specific connection speed (col. 3, lines 3-15); based on said determined connection speed, automatically selecting a content version from said plurality of content versions; and is providing the remote terminal with the selected content version (col. 5, lines 32-47).

However Banga-Smith did not disclose, "determining a response time of the remote terminal at the client interface based on a time period between the first time and the second time; using said response time to determine information related to a connection speed between the remote terminal and the client interface".

In the same field of endeavor Smith disclosed, "Alternatively the client session can periodically issue a test message to the client and measure the period of time before a response time from the client is received (col. 17, lines 39-43)".

Art Unit: 2145

It would have been obvious to one having ordinary skill in the art at the time of the invention was made to have incorporated alternatively the client session can periodically issue a test message to the client and measure the period of time before a response time from the client is received as taught by Smith in the method and system of Banga-Smith to provide a data delivery mechanism which dynamically adjusts transmission rates to the speed at which a client can receive and process data while ensuring that updated data received by a client is current.

3. As per claim 2 Banga-Smith disclosed further comprising determining a data flow rate from the determined response time of the remote terminal, and wherein the determining the response time comprises: starting a timer at the first time when the client interface sends the first packet to the remote terminal; and stopping the timer at the second time when the client interface receives the second acknowledgement packet from the remote terminal (Banga, col.. 6, lines 53-66).

4. As per claims 3,13 Banga-Smith disclosed further comprising determining network congestion based on the determined response time (Banga, col. 4, lines 29-47).

5. As per claims 4,14 Banga-Smith disclosed further comprising determining the response time based on a timing of a handshake between the remote terminal and the client interface (Banga, col. 1, lines 58-67 & col. 2, lines 1-4).

6. As per claim 5 Banga-Smith disclosed wherein selecting the destination address from a plurality of addresses is based on a requested address by the remote terminal and the determined response time (Banga, col. 6, lines 53-66).

7. As per claim 7 Banga-Smith disclosed further comprising determining a data flow rate from the remote terminal based on the response time (Banga, col. 4, lines 29-47).

8. As per claim 8 Banga-Smith disclosed wherein the requested destination address includes a main destination address and a plurality of sub-addresses, each of said sub-addresses corresponding to a connection speed and optimized for a said connection speed (Banga, col. 2, lines 1-11).

9. As per claim 9 Banga-Smith disclosed further comprising determining a network congestion based on the determined response time (Banga, col. 4, lines 29-47).

10. As per claims 10,12 Banga-Smith disclosed further comprising connecting the remote terminal to the selected destination address (Banga, col. 5, lines 48-67).

Response to Arguments

Applicant's arguments with respect to claims 1-14 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Adnan Mirza whose telephone number is (571)-272-3885.

12. The examiner can normally be reached on Monday to Friday during normal business hours. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571)-272-3933. The fax for this group is (703)-746-7239. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

Art Unit: 2145

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866)-217-9197 (toll-free).



Adnan Mirza

Examiner



JASON CARDONE
SUPERVISORY PATENT EXAMINER